



NTEU at NMMU

The Common Law Contract of Employment : Part 7

Termination of the contract of employment

The contract of employment may be terminated in various ways by either party – employer or employee. These include:

- By notice if the contract has been concluded for an indefinite period
- By mutual agreement
- By summary termination in the event of material breach
- By effluxion of time if the contract has been concluded for a specific time (contract worker)
- Supervening impossibility of performance
- Insolvency of the employer
- On completion of a specific project for which the employee was employed
- Redundancy of a post
- Operational reasons

The required notice period is usually contained in the contract of employment. If an employee decides to resign, (s)he gives notice, normally in writing, works out the notice period and the contract terminates at the conclusion of the notice period. A resignation is regarded as a unilateral decision by the employee and having resigned cannot retract the resignation, expecting the employer to accept it. The employer is under no obligation to accept a retraction of resignation. It happens at times that an employee becomes disgruntled and resigns in anger, hoping the employer will not wish to lose his/her services and then address what is upsetting the employee. The employer may decide not to retain the employee and accepts the resignation to the shock of the one who resigned who then tries to retract it only to find that the employer refuses to accept the retraction. Employees are, therefore, cautioned not to resign under duress, only to regret it later. They should rather address their problems in another way.

In the case of a resignation, either party could pay the other party the amount of salary the person would have earned during the notice period, in lieu of notice, and the individual leaves immediately. Employers sometimes do that if they fear retaining the employee for the notice period constitutes a risk.

An employer cannot, under normal circumstances, decide to terminate the contract of employment of an employee and give notice to that effect. The employer has to have a sound reason to terminate the contract of employment and follow a fair procedure in so doing. There are times when, for operational reasons, the employer is forced to terminate a contract of employment by way of retrenchment, but is obliged to follow a S189 of the Labour Relations Act process. This section of the LRA requires, among others, that the employer must:

- Give adequate notice of its contemplation to reduce staffing levels.
- Provide adequate information motivating why it is necessary.
- Seek ways to prevent a retrenchment by seeking alternative employment for employees affected or reducing overtime and spreading the work load.
- Agree on criteria that will be used to select those who will be retrenched.
- Pay a retrenchment package of one week's pay for every year of service.

Those employed on what is generally known as a fixed term contract of employment that has a closing date, have to accept that once that date arrives, the contract terminates. Such employees have no legal recourse to force the employer to renew the contract. However, since the recent amendment to S198 of the LRA, employers may not, unless there is a justifiable reason, employ an individual on a fixed term contract for longer than three months. Justifiable reasons include:

- Project work for longer than three months.
- Seasonal work.
- Employing a retired person.
- Employing a foreigner who has a work permit for a defined period.
- Student or graduate internships
- Replacement of another employee who is temporarily absent
- Temporary increase in work volume (expected duration up to 12 months)
- Public works or job creation schemes
- Positions funded by external sources for limited periods

If an employer needs to extend a contract of employment beyond the three months, but there is no justifiable reason, the only way in which to retain the employee is to convert the contract to a permanent capacity contract.

The topic of terminating the contract of employment will be continued in the next What's Up.

CREDIT: PROF NORMAN D KEMP – FORMER NTEU PRESIDENT

To deny people their human rights is to challenge their very humanity.
Nelson Mandela



What are the legal rights of pregnant employees?

The Basic Conditions of Employment Act [BCEA] states the following, inter alia, regarding maternity leave (paraphrased) :

An employee may commence maternity leave—

- 1.1 at any time from four weeks before the expected date of birth, unless otherwise agreed; or
- 1.2 on a date from which a medical practitioner or a midwife certifies that it is necessary for the employee's health or that of her unborn child.

No employer may require or permit a pregnant employee or an employee who is nursing her child to perform work that is hazardous to her health or the health of her child.

During an employee's pregnancy, and for a period of six months after the birth of her child, her employer must offer her suitable, alternative employment on terms and conditions that are no less favourable than her ordinary terms and conditions of employment, if the employee's work poses a danger to her health or safety or that of her child.

Bullying of a pregnant employee or actions that may cause anxiety or stress are seen as risk factors and therefore can be seen to pose a danger to the health of the employee and her unborn child.

NMMU's Policy on the Management of Leave states the following, inter alia, regarding maternity leave :

SECTION 19 : MATERNITY, ADOPTION AND PARENTAL LEAVE : ALL EMPLOYEES

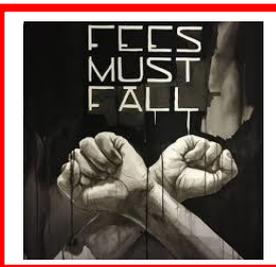
19.1 MATERNITY LEAVE : PERMANENT AND LTC EMPLOYEES

Maternity leave for permanent and LTC employees, with more than one year's service, consists of a maximum of six months leave, of which only three months will consist of paid leave, limited to a total of two confinements.

19.1.1.5 An employee may access her other leave credits, e.g. non-accumulative, accumulative and BALA leave, to supplement the maternity leave.

It is clear from these two extracts that a pregnant employee :

- has the full protection of the law regarding the health and well-being of both the mother and the baby, unborn and post-birth;
- may start her maternity any time from within a month of the expected delivery date;
- may take six months maternity leave in total, three of which are paid and three of which are unpaid, and may use any available non-accumulative and accumulative leave in place of the unpaid maternity leave.



The events that unfolded on 21, 22 and 23 October 2015 at the NMMU during the #FeesMustFall student protest will be etched in our minds for time to come. Many of our members were part of the unfortunate group who were stuck on campus.

NTEU cannot comment on the actions of NMMU Management during this time. The incidents were out of the ordinary and (hopefully) it won't be repeated very soon. At

the least, one can be hopeful that valuable lessons were learnt in dealing with the protesting students, the non-protesting students, staff and staff members' families too. It was a trying time. One cannot really be fully prepared for if and when it happens, but Management should have expected protests considering all the calls from other students nationally that students across SA should join the protests.

Be it as it may, NTEU brought these concerns to the VC's attention at a meeting with him and the DVC: IS on the following Tuesday, 27 October 2015. We also expressed our concern that ambulances were prevented from coming onto campus to help those in distress. We made it clear in no uncertain terms those non-protesting students and staff members also have rights. One cannot only observe the rights of certain groupings, whilst neglecting the rights of others.

Long story short, our concerns were heard and we trust that Management will deal with a similar situation better should it occur again. It is also imperative that communication with staff is clear, concise and free from ambiguity. From the union's side we are extremely grateful for the manner in which staff dealt with the crisis at the time and are continuing to deal with the after-math. You are after all feeling the impact of helping students catch up, accommodating them so that final marks can be submitted, having longer consultation hours to accommodate students, etc. We salute you!